

Primer on Reconciliation Procedures in the Senate

PROCEDURES FOR SENATE CONSIDERATION OF THE DEFICIT REDUCTION RECONCILIATION BILL
CALLED FOR IN S. CON. RES. 13 B THE FY 2010 BUDGET RESOLUTION
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PROCEDURES FOR CONSIDERATION OF A DEFICIT REDUCTION RECONCILIATION BILL

(Updated March 2010)

Reconciliation Instructions in S. Con. Res. 13 B the FY 2010 Budget Resolution

Sections 201 and 202 of the FY 2010 Budget Resolution provide reconciliation instructions to the Senate Committees on Finance and Health, Education, Labor, and Pensions (HELP) and the House Committees on Energy and Commerce, Ways and Means, and Education and Labor to reduce the deficit by \$2 billion over the period FY 2009-14. No other committees of either the Senate or the House received instructions.

The Senate committees have not reported any recommendations pursuant to their instructions, so there will be no Senate-reported reconciliation bill. When the House-passed reconciliation bill passes the House and is sent to the Senate, the House omnibus reconciliation bill will be placed on the calendar.

Consideration of the House Reconciliation Act

Provided that the House passes a reconciliation bill that conforms with the reconciliation instructions within the definition of the Budget Act, it can be considered in the Senate under the provisions of section 310(e) of that Act. By precedent, the reconciliation bill is privileged and, therefore, the bill need not lie over on the Calendar for one legislative day and the motion to proceed to its consideration is not debatable.

Debate on the reconciliation bill is limited to 20 hours. Note that this is a limit on debate time, not a limit on overall consideration. The time limit includes debate on the bill, on all amendments thereto, on debatable motions and appeals, and time consumed in quorum calls (except those that precede roll call votes). The limit does not include time consumed by votes, by quorum calls that precede roll call votes, or by reading of amendments.

Debate on first degree amendments is limited to two hours equally divided. Debate on any second degree amendment or a debatable motion or appeal is limited to one hour equally divided. The managers of the bill may yield additional time off the bill for debate on any debatable question.

Time for debate on the bill may be reduced by unanimous consent or by a simple majority vote on a nondebatable motion.

When all debate time has expired, amendments may continue to be proposed and disposed of, motions may be made, points of order raised, and quorum calls may occur. However, Senators may not engage in debate absent unanimous consent.

A point of order or any debatable motion made in relation to the bill is in order during the pendency of the bill. However, time on a pending motion or amendment must be used or yielded back before a point of order, a motion to table (or any other applicable motion), or a second degree amendment is in order.

Once Senate debate has been used or yielded back on the House-passed reconciliation bill (and no further amendments or motions are proposed and no further points of order are raised), the question will be on the measure. Depending on whether any amendment is adopted, or point of order against the House-passed reconciliation bill is sustained, the Senate will dispose of the measure by: 1) voting on sending the reconciliation measure to conference, 2) voting on the House-passed reconciliation bill as amended by the Senate to be sent to the House for further amendment, or 3) voting on the passage of the unamended House-passed reconciliation bill.

Three steps are required to send the measure to conference: 1) a motion to insist on the Senate amendment, 2) a motion to request a conference with the House, and 3) appointment of conferees, which may be achieved by motion or by a consent request authorizing the Chair to appoint. While the Budget Act does not contemplate these actions outside of the context of a House Message, the Parliamentarian has suggested that given the overall nature of the expedited procedures provided the reconciliation process, an overall 10 hour limit for getting to conference might be appropriate.

This year, the Senate Majority leadership has guaranteed that the House-passed reconciliation bill will come to the floor of the Senate for a straight up- or-down vote without any changes. If this difficult goal is achieved, then at the end of consideration, the vote will be on the passage of the House-passed reconciliation bill. Upon Senate passage, the reconciliation bill will be sent to the president for signature.

Control of Time

Time for debate, generally, is equally divided and controlled by the Majority Leader and the Minority Leader or their designees.

Time for debate on amendments (and debatable motions and appeals) is controlled by the Senator who proposed the amendment (motion or appeal) and the majority manager of the bill. If the majority manager favors the amendment (motion or appeal), time in opposition is controlled by the Minority Leader or his designee.

Compliance with Instructions

A committee will have met its reconciliation instructions if each committee's recommendations produce a net deficit reduction of at least \$1 billion over the period 2010-2014.

The Finance and Health, Education, Labor, and Pensions committees have received an instruction to achieve a certain amount of deficit reduction. The failure of the Finance and HELP Committees to report reconciliation legislation has the following consequence:

The matter contained in the House-passed reconciliation bill will not determine what is germane for Senate amendments. The germaneness standard is wide open, as long as the subject matter of an amendment is within the jurisdiction of the instructed committees, Finance and HELP, and moves towards compliance (the instructed savings).

The Budget Committee has the responsibility for determining whether a committee has complied with the instructions. The Budget Committee makes this determination based on CBO/JCT cost estimates.

Motion to Commit with Instructions

Within the context of reconciliation, a motion to commit to a committee is not in order unless it includes instructions to report back to the Senate within no more than three days. The instructions must include the time period in which the committee must report and any legislative language it is required to report. The legislative language is considered to be part of the original motion, and is, therefore, amendable in two degrees. (The committee named in the motion is not amendable).

A motion to commit with instructions to report back within three days an amendment is subject to the germaneness requirements and the Byrd Rule restrictions.

Points of Order

Reconciliation bills and amendments thereto, and conference reports thereon, are subject to all the same points of order in the Budget Act and in budget resolutions that apply to all other bills (plus a few more that only apply to reconciliation bills). Unless otherwise indicated, all points of order discussed in this section require the affirmative vote of 60 Senators to waive the point of order or to overturn the ruling of the Chair on appeal. All section references are to the Congressional Budget Act unless further specified to a budget resolution or some other law.

Allocations: Sec. 302(f) provides for a point of order against a bill that increases budget authority or outlays in excess of the committee allocation made pursuant to the budget resolution for 2010 or 2014.

Spending and Revenue Aggregates: Sec. 311(a)(2) provides for a point of order against a bill or an amendment that causes total spending to exceed the level set in the budget resolution for 2010 or an amendment that reduces revenues below the floor set in the budget resolution for 2010 or 2010-2014.

Pay-as-you-go: Sec. 201(a) S. Con. Res. 21, FY 2008, provides a point of order against any amendment that violates the Senate's Pay-Go point of order, which means it cannot add a penny to the deficit for 2010-2014 or increase the deficit more than \$4.206 billion (as of 3/17/10) over the 2010-2019 timeframe.

Short-term Deficits: Sec. 404(a) S. Con. Res. 13, FY 2010 provides for a point of order against amendments that increase the deficit by more than \$10 billion in any one year from 2010 through 2014, unless such deficit increase is fully offset over the 2010-14 period.

Note on the preceding four points of order: If the bill contains provisions that increase net outlays, then the bill as a whole may violate the Finance or HELP Committee's section 302(f) (committee spending) allocation and may violate the section 311 spending aggregates, which normally would result in points of order against the reconciliation bill. However, the FY 2010 Budget Resolution included section 301, a health reserve fund. This reserve fund allows the Chairman of the Budget Committee, when a health bill comes to the floor, to adjust the committee allocations and spending and revenue aggregates in order to avoid a 302(f) or 311 point of order, as long as the bill does not increase the deficit over the 2009-2019 period.

This reserve fund also allows the Chairman of the Budget Committee to adjust other budget resolution levels to avoid the paygo and short-term deficits points of order, as long as the health bill does not increase the deficit over the 2009-2019 period.

Budget Committee Jurisdiction: Sec. 306 prohibits the consideration of bills or amendments that contain matter within the jurisdiction of the Budget Committee, unless the bill or the bill to which the amendment is proposed was reported by the Budget Committee.

Unfunded Mandates (This is a simple majority vote threshold.): Sec. 425(a)(2) provides for a point of order against legislation that contains an unfunded governmental mandate for more than \$69 million in 2010, 2011, 2013 or 2014.

Reconciliation for deficit reduction only: Sec. 202(a) of S. Con. Res. 21, FY 2008, provides a point of order against a reconciliation bill that increases the deficit by any amount for the years 2010-2014 or for the years 2010-2019.

Long-term Deficits: Sec. 311(b) of S. Con. Res. 70, FY 2009, provides a point of order against amendments that increase the deficit by more than \$5 billion in any of the four consecutive 10-year periods after 2019 (2020-2029, 2030-2039, 2040-2049, or 2050-2059).

Emergency Designation: Sec. 403(e)(1) of S. Con. Res. 13, FY 2010, permits Senators to eliminate an "emergency" designation by raising a point of order against the designation.

Emergency Designation in Statutory Pay-Go Act: Sec. 4(g) of PL: 111-139, permits Senators to eliminate an “emergency” designation regarding the statutory Pay-Go law.

Quick Summary of Points of Order Applicable to Reconciliation Legislation Only:

Germaneness: Sec. 305(b)(2), applicable through section 310(e), requires amendments proposed to reconciliation bills to be germane. (More detail below.)

Reconciliation Compliance: Sec. 310(c) provides a point of order against a reconciliation bill that falls short of reconciliation instructions for any committee.

Noncompliance: Sec. 310(d) prohibits any amendments that bring a committee out of compliance with its instructions unless it is deficit neutral.

Social Security: Sec. 310(g) restricts the content of the reconciliation bill by prohibiting recommendations with respect to the Social Security (OASDI) program. (More detail below.)

Byrd Rule: Sec. 313, the Byrd Rule, provides a point of order against extraneous provisions in the reconciliation bill. If such a point of order is sustained by the Chair, the provisions are stricken from the bill. The point of order is also available against amendments proposed to the bill and provisions within a conference report. Six categories of provisions are defined as extraneous. However, the Parliamentarian has advised that the general prohibition against extraneous material in section 313(a) may be sufficient to sustain a Byrd Rule point of order. (More detail below.)

More Detail on Points of Order Applicable to Reconciliation Legislation Only:

Germaneness: Section 305(b)(2) requires that amendments to a reconciliation bill be germane. Under the precedents of the Senate, germaneness is a more narrow or stringent concept than “relevance,” which is a mere subject matter test. The following types of amendments are per se germane:

- o A committee amendment (generally included within the instructions to the motion to recommit a reconciliation bill);
- o An amendment to strike;
- o An amendment to change numbers or dates; and
- o An amendment proposing non-binding language.

For any amendment that does not fall into one of the categories above, germaneness is determined on a case-by-case basis. Note that while an amendment proposing non-binding language may be germane, it likely would violate the Byrd Rule. In order for an amendment to

be germane, it must necessarily be relevant. In addition, germaneness may be found if the amendment restricts or narrows some provision, class, authority, duty, or power contained in the bill or underlying amendment. Because this year's bill is a House-originated reconciliation bill and there is no Senate reported companion measure, the germaneness standard for amendments is open to any matter within the jurisdiction of Finance or HELP that does not take the committee out of compliance. The universe of germane amendments will be much broader than has been the case with previous reconciliation bills.

Important Note: Once language has been stricken from the underlying bill by a point of order or by an amendment, that language no longer serves as a basis for germaneness for subsequent amendments. In addition, if an amendment is germane, its germaneness does not immunize it from other prohibitions, restrictions, or requirements. For instance, a sense of the Senate amendment may be *per se* germane, but it is extraneous under the Byrd Rule because, by its very terms, it produces no change in outlays or revenues.

Social Security/Recommendations With Respect to the OASDI Program: Section 310(g) of the Budget Act provides a point of order against a reconciliation bill, amendment, or conference report which contains recommendations with respect to the old age, survivors, and disability insurance program under title II of the Social Security Act. (**Note:** This section is referenced as a definition of an "extraneous" provision under the Byrd Rule and thus a fatal point of order against an entire bill may be pre-empted by a Byrd Rule point of order against the offending provision).

The Byrd Rule (Extraneous Provisions): The Byrd rule (Section 313 of the Budget Act) allows a member to raise a point of order against a provision that contains material that is extraneous to the instructions to a committee. A single point of order may be raised against several provisions at the same time. Similarly, a motion to waive may be made for one or several provisions.

The Byrd rule identifies these six categories of language as "extraneous":

(b)(1)(A) a provision which produces no change in outlays and revenues;

Exception: unless the chairman and ranking member of both the Budget Committee and the committee reporting the provision certify that:

- *it is designed to "mitigate the direct effects clearly attributable to a provision changing outlays or revenues and both provisions together produce a net reduction in the deficit";*
- *it will produce a substantial reduction in outlays or a substantial increase in revenues after the years covered in the bill;*
- *it is likely to produce a reduction in outlays or increase in revenues as a result of new regulations, court rulings on pending litigation, or changing*

- relationships between economic indices; or*
- *it will likely result in a significant reduction in outlays or increase in revenues, but such changes cannot be reliably estimated.*
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A provision that changes the terms or conditions under which outlays are made or revenues are collected is not subject to this point of order. This category has included administrative requirements necessary to implement the provision that changes outlays or revenues. This category has included definitions and reporting requirements *necessary* to implement the provision that changes outlays or revenues. This does not include reporting requirements for informational purposes. A policy change that masquerades as a term or condition will likely be subject to this Byrd Rule point of order.

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(b)(1)(B) in the case of a committee which has not met its reconciliation instructions, a provision which increases outlays or decreases revenues;

Provisions reported by a committee that is not in compliance with its instructions (either as reported or as a result of a successful point of order) are subject to this Byrd Rule point of order. However, if a (B) point of order is successful and the committee is no longer out of compliance, other provisions that increase outlays or decrease revenues are no longer vulnerable.

(b)(1)(C) a provision which is within the jurisdiction of another committee;

Exception: unless it is an integral part of a provision or title that, if introduced separately would be referred to such committee, and it sets forth the procedure to carry out the substantive provisions which fall within the jurisdiction of such committee; or

- *it states an exception to, or a special application of, the general provision of which it is a part and that general provision is in the jurisdiction of such committee.*
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(b)(1)(D) a provision producing changes in outlays or revenues which are "merely incidental to the non-budgetary components of the provision";

The Parliamentarian will evaluate language under (b)(1)(D) with great care. Provisions whose primary purpose is to modify behavior, regardless of the change in outlays or revenues connected to it, would likely be subject to a point of order under this subparagraph.

- (b)(1)(E) a provision which would, on net, increase outlays or decrease revenues in a fiscal year after the period covered by the reconciliation bill; and,**
- (b)(1)(F) a provision which contains recommendations relative to the old age, survivors, and disability insurance program under title II of Social Security.**

Generally, the Parliamentarian and the Chair rely on Budget Committee scoring with respect to those subparagraphs of section 313 which are governed by scoring (313(b)(1)(B) and 313(b)(1)(E)). The Chair will decide questions of jurisdiction, whether a provision's savings are "merely incidental" to the non-budgetary components, and the proper application of the "terms and conditions" exception. The Chair is also responsible for the determination of the application of the Byrd Rule exceptions. The Chair is advised by the Parliamentarian, but need not accept that advice.

Mathematical consistency

It is generally not in order to offer an amendment which would amend the bill in more than one place. But Section 305(b)(4) of the Budget Act allows such amendments if they make the bill mathematically consistent or maintain such consistency.

The general rule would also prohibit an amendment which sought to change a figure or figures which had already been amended. Again, the mathematical consistency provisions of the Budget Act override the general rule. Such amendments would be in order provided they achieved or maintained mathematical consistency.

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